

Hon. Robert J. Bryan

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

DIANA AND JOSEPH BONGIOVANNI,) Case No. 3:13-cv-05908-RJB
Plaintiffs,) **FIRST AMENDED COMPLAINT AND**
vs.) **JURY DEMAND**
THE SCHREIBER LAW FIRM, PLLC,)
Defendant.)

NATURE OF ACTION

1. This is an action brought under the federal Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

JURISDICTION AND VENUE

2. This Court has jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the acts and transactions giving rise to Plaintiff’s action occurred in this district, where Plaintiffs reside in this district, and where Defendant transacts business in this district.

PARTIES

4. Plaintiffs, Diana and Joseph Bongiovanni (“Plaintiffs”), are natural persons who at all relevant times resided in the State of Washington, County of Cowlitz, and City of Castlerock.

1 5. Plaintiffs are “consumers” as defined by 15 U.S.C. § 1692a(3).

2 6. Defendant, The Schreiber Law Firm, PLLC (“Defendant”) is an entity who at all
3 relevant times was engaged, by use of the mails and telephone, in the business of attempting to
4 collect a “debt” from Plaintiffs, as defined by 15 U.S.C. § 1692a(5).

5 7. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

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7 **FACTUAL ALLEGATIONS**

8 8. Plaintiffs are natural persons once obligated, or allegedly obligated, to pay a
9 debt owed or due, or asserted to be owed or due a creditor other than Defendant.

10 9. Plaintiffs’ alleged obligation arises from a transaction in which the money,
11 property, insurance, or services that are the subject of the transaction were incurred primarily
12 for personal, family, or household purposes—namely a personal credit account once owed to
13 GE Money Bank for a Walmart card number ending in 2634 (the “Debt”).

14 10. Defendant uses instrumentalities of interstate commerce or the mails in a
15 business the principal purpose of which is the collection of any debts, and/or regularly collects
16 or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due
17 another.
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19 11. In or about December 2012, Plaintiffs settled the Debt and satisfied any
20 obligation allegedly owed in full.
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22 12. On or about August 16, 2013, Defendant called Plaintiffs and attempted to
23 collect the Debt.
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25 13. Defendant stated it would give Plaintiffs 24 hours to pay the Debt or it would
26 file a lawsuit against Plaintiffs to collect the Debt.
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1 14. Upon information and good-faith belief, Defendant did not intend to file a
2 lawsuit against Plaintiff to collect the Debt.

3 15. As of the date of this complaint, upon information and good-faith belief,
4 Defendant has not initiated any legal proceedings against Plaintiffs to collect the Debt.

5 16. Because the alleged Debt was settled in full, Defendant could not legally bring a
6 lawsuit against Plaintiffs to collect the Debt.

7 17. The phone call on or about August 16, 2013 was Defendant's initial
8 communication with Plaintiffs regarding the Debt.

9 18. Defendant did not provide Plaintiff with the notices provided by 15 U.S.C. §
10 1692g(a) in its initial communication with Plaintiffs.

11 19. Defendant did not send Plaintiffs a written communication containing the
12 notices provided by 15 U.S.C. § 1692g(a) within five days after its initial communication with
13 Plaintiffs.

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16 **COUNT I**
17 **VIOLATION OF 15 U.S.C. § 1692e(2)(A)**

18 20. Plaintiffs repeat and re-allege each and every factual allegation above.

19 21. Defendant violated 15 U.S.C. § 1692e(2)(A) by falsely representing the
20 character, amount, or legal status of Plaintiffs' alleged debt.

21 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- 22
23 a) Adjudging that Defendant violated 15 U.S.C. § 1692e(2)(A);
24 b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A),
25 in the amount of \$1,000.00;
26 c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
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- d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);
- e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

COUNT II
VIOLATION OF 15 U.S.C. § 1692e(5)

22. Plaintiffs repeat and re-allege each and every factual allegation above.

23. Defendant violated 15 U.S.C. § 1692e(5) by threatening to take an action in connection with the collection of a debt that it did not intend to take or that it could not legally take.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692e(5);
- b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of \$1,000.00;
- c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);
- e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

COUNT III
VIOLATION OF 15 U.S.C. § 1692e(10)

24. Plaintiffs repeat and re-allege each and every factual allegation above.

25. Defendant violated 15 U.S.C. § 1692e(10) by using false representations or deceptive practices in connection with the collection of an alleged debt from Plaintiff.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692e(10);
- b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of \$1,000.00;
- c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);
- e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be allowed under the law;
- a) Awarding such other and further relief as the Court may deem just and proper.

**COUNT IV
VIOLATION OF 15 U.S.C. § 1692g(a)**

26. Plaintiffs repeat and re-allege each and every factual allegation above.

27. Defendant violated 15 U.S.C. § 1692g(a) by failing to provide Plaintiff with the notices required by 15 U.S.C. § 1692g(a), either in the initial communication with Plaintiff, or in writing within 5 days thereafter.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692g(a);
- b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of \$1,000.00;
- c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);

- 1 d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action
2 pursuant to 15 U.S.C. § 1692k(a)(3);
3 e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be
4 allowed under the law;
5 f) Awarding such other and further relief as the Court may deem just and proper.
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7 **TRIAL BY JURY**

8 28. Plaintiffs are entitled to and hereby demand a trial by jury.
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10 Respectfully submitted this 31st day of December, 2013.

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